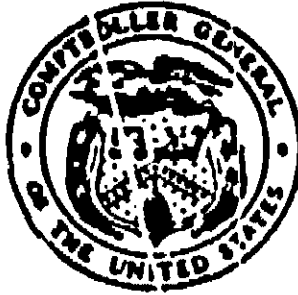


**DECISION**

THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20348

Woods  
PL 2  
120114

FILE: B-206250

DATE: December 20, 1982

MATTER OF: Central Mechanical, Inc.

**DIGEST:**

A bidder's allocation of its bid price between "materials" and "services and other obligations," which is not in the same proportion of those of the other two bidders, may cause the contracting officer to suspect a mistake in the bid and to request verification from the bidder, but is not such an obvious mistake that the contracting officer, upon receipt of verification, could not properly accept the bid.

Central Mechanical, Inc. protests the pending award of a contract to Empire Mechanical Contractors under invitation for bids (IFB) No. 764-20-82 issued by the Veterans Administration (VA). The protester argues that Empire's bid for the project should not be accepted because it contains an obvious error. The protest is denied.

**BACKGROUND**

The IFB required contractors to submit bids on five alternate bid items in connection with the replacement of steam distribution lines and pumps at the Olin E. Teague Veterans' Center in Temple, Texas. Item No. I was for general construction as well as mechanical, electrical, and other work. Each of the succeeding four items incorporated the work described in the immediately preceding item, except for certain specified deletions. The IFB stated that a single award would be made on item No. I, but that if the lowest responsible bid should exceed available funds, a single award would be made on item Nos. II, III, IV, or V, in that order of priority.

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In addition to requiring a total price for each item, the bid forms provided spaces under each item for the entry of amounts for "materials to be incorporated into the construction of this bid item" and "services and other obligations for this bid item." The solicitation contained no explanation as to the purpose of these entries or what constituted "materials," "services," or "other obligations." Only the total prices bid for each item were evaluated for award; the "materials" and "services" entries were not considered. In its report to our Office, the VA characterized these entries as "information" which was "for the convenience of the contracting officer only."

Three bids were received in response to the IFB as follows:

	<u>Empire</u>	<u>Central Mechanical</u>	<u>Triangle Engineers</u>
<u>Item I</u>			
Materials	\$325,648	\$182,500	\$267,687
Services	76,477	200,000	333,013
Total of Bid Item I	402,125	382,500	600,700
<u>Item II</u>			
Materials	302,847	184,000	255,368
Services	71,903	185,500	317,206
Total of Bid Item II	374,750	369,500	572,574
<u>Item III</u>			
Materials	288,547	178,000	245,634
Services	66,963	178,500	305,116
Total of Bid Item III	355,510	356,500	550,752
<u>Item IV</u>			
Materials	272,467	173,000	235,362
Services	60,743	173,500	292,355
Total of Bid Item IV	333,210	346,500	527,717
<u>Item V</u>			
Materials	253,339	163,000	215,680
Services	52,476	163,500	267,908
Total of Bid Item V	305,815	326,500	483,588

Noticing that for each item the amounts entered by Empire for services were substantially less than the amounts indicated by the other bidders, the contracting officer requested verification of Empire's bid. Empire stated that its total bid for each item was correct. Because it did not understand exactly how the VA wanted costs to be allocated, the amounts listed for services included only its costs for labor, taxes and insurance. All other costs, Empire states, including subcontractors' costs and overhead, were included in the materials portion of its bid. The Veterans Administration decided to award a contract to Empire for item No. III.

The protester argues that for each item the amount shown by Empire for "services and other obligations" is so ridiculously low that it is obviously erroneous. The protester relies on our prior decisions in which we held that an obviously erroneous bid cannot be accepted, even after verification. See, e.g., 51 Comp. Gen. 498 (1972).

The VA takes the position that Empire's bid does not contain a mistake. It says that Empire verified its bid and stands by its prices as submitted. It says further that the breakdown of prices into materials and services is of no consequence.

#### ANALYSIS

The Federal Procurement Regulations (FPR) provide that after the opening of bids, contracting officers are to examine all bids for mistakes. FPR § 1-2.406-1 (1964 ed.). When the contracting officer has reason to believe that a mistake may have been made, he is required to request verification of the bid from the bidder. Id. If the bidder alleges a mistake, the regulations authorize the agency to permit the bidder either to correct his bid or withdraw it, provided the requisite evidentiary standard is met. FPR § 1-2.406-3(a)(1)-(3). If the bidder verifies his bid, the contracting officer is directed to consider the bid as originally submitted. FPR § 1-2.406-3(d)(2). Generally, the bidder may verify his bid without having to prove that no mistake was made. G.T. Murphy, Inc., B-204351, February 23, 1982, 82-1 CPD 161.

A bid that contains an obvious error, however, may not be accepted, despite verification, when acceptance of the bid at the verified price would displace another bidder. RAJ Construction, Inc., B-191708, March 1, 1979, 79-1 CPD 140. The general rule with regard to such a bid is that it must be rejected, even if the bidder denies making a mistake, unless the bidder provides convincing evidence that the bid with the apparent error in fact was the intended bid. 51 Comp. Gen. 498, supra; 39 id. 185 (1959). The primary reason for this rule is that a bidder should not be allowed to verify an erroneous bid after bid opening and thereby enter into a contract to which it would not have been entitled but for the error. B-147397, October 24, 1961, discussed in 51 Comp. Gen., supra.

The protester argues that this case is controlled by the rule concerning obviously erroneous bids, and relies heavily upon 51 Comp. Gen. 498, supra. In that case, a bidder's price for a two-color printing job was only one-third the price submitted for the same job printed in one color. When contacted regarding this anomaly, the bidder verified its prices as submitted. Because in a prior solicitation, however, the two-color item price was to be added to the basic one-color price, we thought it likely that the bid on the new solicitation was based on the wording of the earlier one. We said that it was not reasonable to expect a two-color printing job to cost only one-third the price of the same job printed in one color, and that the current bid was an obvious error. Relying on our holding in 39 Comp. Gen. 185 (1959), we held that the bidder should not have been allowed to verify its prices on the two-color items because it had failed to establish convincingly that these were the prices originally intended.

We do not agree that this case is controlled by the rule in 51 Comp. Gen. 498. Our decisions in that case and others that preceded it, that is, 39 Comp. Gen. 185, supra; 35 id. 33 (1955) and B-147397, supra, were predicated on the bidder's insertion in its bid of an apparent ambiguity as to the intended price. See Yardney Electric Corporation, 54 Comp. Gen. 509 (1974), 74-2 CPD 376. These decisions were intended

to prevent the bidder from manipulating his competitive position by deciding after bid opening which interpretation of his bid was actually intended. Id. In this case, however, there is no ambiguity in the total price Empire bid for the work. Its bid cannot reasonably be interpreted as offering more than one total price on any of the five bid items. Consequently, our decision at 51 Comp. Gen. 498 is inapposite.

This case differs from the obvious error cases in that it does not involve an absurdly low unit price, e.g., RAJ Construction, Inc., supra, or an apparent offer by the bidder to contract at a price that could not possibly have been intended. Rather, Empire's allocation of its price between materials and services, although admittedly not in the same proportion as that used by the other two bidders, involves an interpretation of the VA's undefined request for an allocation of its prices. Clearly, the total of Empire's bid to perform all of the work required by the specification is not out of line with the total offered by Central to do the same work. At most, the relatively low figures indicated for services were enough to cause the contracting officer to question whether Empire's bid was mistaken. Since the contracting officer took the measures required of him by FPR § 1-2.406-3, it was proper, indeed mandatory, for him to consider the bid as submitted, FPR § 1-2.406-3(d)(2), and we believe that an award of the contract to Empire would legally obligate it to perform all of the work required by the contract notwithstanding how it chose to allocate its prices for bidding purposes.

The protester attaches much significance to the fact that, whether through design or inadvertence, Empire has placed itself in the favorable position of having the option either to withdraw its bid, request correction or insist that its bid as submitted is correct. The protester argues that, under our decisions, whenever a bidder has placed himself in this position his bid must be rejected. We believe the protester's argument overlooks the impact of the applicable regulatory safeguards. In Mitchell Construction Company, Inc., B-208258, October 28, 1982, 82-2 CPD 378, we noted that so long as procurement regulations permit

correction of bids after bid opening, the possibility exists for an unethical bidder to manipulate his position in the procurement after learning of his competitor's prices. We then pointed out that the regulations covering mistakes in bids tend to safeguard against possible abuse. These regulations permit a bidder to withdraw his bid only when the existence of a mistake is established by clear and convincing evidence. FPR § 1-2.406-3(a)(1); Defense Acquisition Regulation (DAR) § 2-406.3(a)(1)(1976 ed.). A bidder may correct his bid only when the evidence is clear and convincing both as to the existence of a mistake and as to the bid actually intended. FPR § 1-2.406-3 (a)(2)(3); DAR § 2-406.3 (a)(2)(3). In this case, it is far from clear that Empire would be able either to withdraw or correct its bid given its bottom line item pricing.

The protest is denied.

*Milton J. Fowler*  
for Comptroller General  
of the United States